

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NEWSMAX MEDIA, INC.

Plaintiff,

v.

MARK NEJMEH,

Defendant.

C.A. No. 13-cv-06248-JAP-LHG

**AFFIDAVIT OF MARK LERNER**

STATE OF NEW YORK      )  
                                )  
                                ) ss.:  
COUNTY OF NEW YORK    )

MARK LERNER, being duly sworn, deposes and says:

1. I am partner and member of the firm Satterlee Stephens Burke & Burke LLP and legal counsel to plaintiff Newsmax Media, Inc. ("Newsmax" or "Plaintiff"). I make this affidavit in support of Plaintiff's application for a temporary restraining order against defendant Mark Nejmeh ("Nejmeh" or "Defendant").

2. Annexed here as Exhibit A is a true and correct copy of my letter to Defendant dated October 11, 2013.

3. Annexed here as Exhibit B is a true and correct copy of my letter to Defendant dated October 14, 2013.

4. Annexed here as Exhibit C is a true and correct copy of an email exchange between Defendant and me from October 11, 2013 to October 14, 2013.



Mark Lerner

Sworn to before me this  
22nd day of October 2013.



Notary Public

MICHELLE MASINO  
Notary Public, State of New York  
No. 01MA4780501  
Qualified in Kings County  
Commission Expires 7/31/2017

1793501\_1

# EXHIBIT A

SATTERLEE STEPHENS BURKE & BURKE LLP

230 PARK AVENUE  
NEW YORK, NY 10169-0079  
(212) 818-9200  
FAX (212) 818-9606

www.ssbb.com

E-Mail: [mlerner@ssbb.com](mailto:mlerner@ssbb.com)  
Direct Dial: (212) 404 8714

51 JOHN F. KENNEDY PARKWAY  
FIRST FLOOR WEST  
SHORT HILLS, NJ 07078-2713  
(973) 218-2509  
FAX (973) 218-2401

October 11, 2013

By Express Mail and E-Mail ([mnejmeh@gmail.com](mailto:mnejmeh@gmail.com))

Mr. Mark Nejmeh  
414 Newark Avenue  
Bradley Beach, NJ 07720

Re: Infringement of Registered NEWSMAX Trademarks

Dear Mr. Nejmeh:

We are counsel to Newsmax Media, Inc. ("Newsmax"), which is the owner of the registered marks NEWSMAX (Reg. Nos. 3177090, 4305336, 4305337 and 4308915) for, collectively, print and electronic downloadable magazines featuring news, entertainment news and current events; online newsletters; internet news reporting, commentary and multimedia current events content; and internet broadcasts of radio, television, audio and video podcast and web series programming. Newsmax additionally owns the registered NEWSMAX.COM marks (Reg. Nos. 2721043 and 3659417) for, collectively, providing news and current events via the Internet; entertainment services, namely on-line reviews of movies, books, and music and services; and blogs featuring news and entertainment news. We refer to the NEWSMAX and NEWSMAX.COM registered marks herein as the "Newsmax Marks." Copies of the registration certificates are annexed.

Newsmax is also the owner of the domain name <[newsmax.com](http://newsmax.com)>, which has been registered and used continuously since 1998, for the services offered under the Newsmax Marks.

Newsmax is a leading online news agency and its print publication, Newsmax Magazine, is one of the United States' leading political publications. The Newsmax website and magazine provide breaking news and influential feature stories concerning current events, including politics and entertainment. The NEWSMAX mark was first adopted in 1998 and Newsmax has been offering goods and services under the mark continuously since that time. Newsmax has invested extensively in promoting its marks, through advertising and distribution of its magazine and via its highly trafficked [www.newsmax.com](http://www.newsmax.com) website. As a result of these investments, and through the successful development of the Newsmax brand and business model, Newsmax enjoys a prominent reputation among consumers and within the media industry. Consumers and media industry professionals have come to associate the marks with Newsmax and the marks have built good will of significant value due to the high quality of Newsmax's goods and services.

SATTERLEE STEPHENS BURKE & BURKE LLP

Mr. Mark Nejmeh

October 11, 2013

Page 2

It has come to our client's attention that you are making unauthorized use of the mark "Newsmax" in connection with the domain name <newsmax.us> (the "Infringing Domain"). The website at the Infringing Domain shows only hyperlinks to folders, and there is no evidence that the Infringing Domain is used for any legitimate purpose. Newsmax's efforts to purchase the Infringing Domain via the Go Daddy domain purchase service were declined and countered with a purchase price in the amount of \$80,000.

Given the prominence and fame of the Newsmax Marks, Newsmax cannot assume that your registration of the Infringing Domain, years after Newmax adopted the NEWSMAX mark, was unintentional, but rather was deliberate, bad faith effort to trade on and profit from Newsmax's good will and extensive investment in its Newsmax Marks. The rejection of a reasonable offer for the Infringing Domain and high counteroffer is further evidence of your bad faith and intent to capitalize on Newsmax's mark.

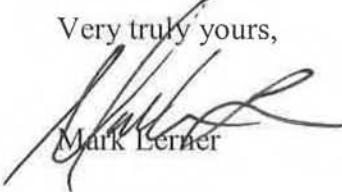
Based on the foregoing, your registration and ownership of the Infringing Domain constitutes cybersquatting as well as trademark infringement, dilution and unfair competition under the Lanham Act and state and common law, and consequently, is also in violation of the Uniform Domain-Name Dispute-Resolution Policy ("UDRP") promulgated and enforced by the Internet Corporation for Assigned Names and Numbers ("ICANN").

We therefore demand that you immediately cease all use of the Infringing Domain and of all other use of the Newsmax Marks or any other similar mark. Specifically and additionally, we demand that you immediately transfer the Infringing Domain to Newsmax by unlocking the domain name, requesting a transfer authorization code, which you shall immediately transmit to us, and promptly confirming the transfer authorization, when notified to do so.

If by October 21, 2013 we do not receive the domain name transfer authorization code and written confirmation that all use of the Newsmax Marks has ceased, Newsmax will not hesitate to take further steps, including initiating a UDRP proceeding, to protect its valuable marks.

This letter is not intended to be a complete statement of Newsmax's rights, and shall not be construed as a waiver of any legal or equitable rights or remedies, all of which are expressly reserved.

Very truly yours,



Mark Lerner

Attachments

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 3,177,090  
Registered Nov. 28, 2006

United States Patent and Trademark Office

TRADEMARK  
PRINCIPAL REGISTER

# NEWSMAX

NEWSMAX.COM (NEVADA CORPORATION)  
560 VILLAGE BLVD, SUITE 270  
WEST PALM BEACH, FL 33409

FOR: MAGAZINES FEATURING NEWS, ENTERTAINMENT NEWS AND FEATURES, IN CLASS 16  
(U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-31-2000; IN COMMERCE 1-31-2000.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,721,043.

SER. NO. 78-795,478, FILED 1-20-2006.

KAREN BRACEY, EXAMINING ATTORNEY

United States of America  
United States Patent and Trademark Office

**Newsmax**

**Reg. No. 4,305,336**

**Registered Mar. 19, 2013**

**Int. Cl.: 9**

**TRADEMARK**

**PRINCIPAL REGISTER**

NEWSMAX MEDIA, INC. (NEVADA CORPORATION)  
SUITE 120  
560 VILLAGE BOULEVARD  
WEST PALM BEACH, FL 33409

FOR: ELECTRONIC DOWNLOADABLE PUBLICATIONS IN THE NATURE OF GENERAL INTEREST NEWS MAGAZINES; DOWNLOADABLE SOFTWARE FOR READING NEWS MAGAZINES THAT MAY BE DOWNLOADED FROM A GLOBAL COMPUTER NETWORK; SOFTWARE IN THE NATURE OF A MOBILE APPLICATION FOR OBTAINING, NEWS, INFORMATION AND COMMENTARY OF THE TYPE FOUND IN GENERAL INTEREST NEWS MAGAZINES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-0-2008; IN COMMERCE 12-0-2008.

OWNER OF U.S. REG. NOS. 2,721,043, 4,084,161 AND OTHERS.

THE MARK CONSISTS OF THE STYLIZED WORD NEWSMAX.

SER. NO. 85-710,719, FILED 8-23-2012.

DAVID ELTON, EXAMINING ATTORNEY



*Leva Stetler Lee*

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

*First Filing Deadline:* You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See 15 U.S.C. §§1058, 1141k.* If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

*Second Filing Deadline:* You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See 15 U.S.C. §1059.*

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or  
reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See 15 U.S.C. §§1058, 1141k.* However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See 15 U.S.C. §1141j.* For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

United States of America  
United States Patent and Trademark Office

# NEWSmax

Reg. No. 4,305,337

Registered Mar. 19, 2013

Int. Cl.: 16

TRADEMARK

PRINCIPAL REGISTER

NEWSMAX MEDIA, INC. (NEVADA CORPORATION)  
SUITE 120  
360 VILLAGE BOULEVARD  
WEST PALM BEACH, FL 33409

FOR: MAGAZINES FEATURING NEWS, ENTERTAINMENT NEWS AND FEATURES, IN  
CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 11-0-2007; IN COMMERCE 11-0-2007.

OWNER OF U.S. REG. NOS. 2,721,043, 4,084,161 AND OTHERS.

THE MARK CONSISTS OF THE STYLIZED WORD NEWSMAX.

SER. NO. 85-710,721, FILED 8-23-2012.

DAVID ELTON, EXAMINING ATTORNEY



*Lisa Stark Lee*

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

*First Filing Deadline:* You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See 15 U.S.C. §§1058, 1141k.* If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

*Second Filing Deadline:* You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See 15 U.S.C. §1059.*

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See 15 U.S.C. §§1058, 1141k.* However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See 15 U.S.C. §1141j.* For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

United States of America  
United States Patent and Trademark Office

# NEWSMAX

**Reg. No. 4,308,915**

**Registered Mar. 26, 2013**

**Int. Cls.: 9, 16, 38 and 41**

**TRADEMARK**

**SERVICE MARK**

**PRINCIPAL REGISTER**

NEWSMAX MEDIA, INC. (NEVADA CORPORATION)

SUITE 120

560 VILLAGE BOULEVARD

WEST PALM BEACH, FL 33409

FOR: ELECTRONIC DOWNLOADABLE PUBLICATIONS IN THE NATURE OF GENERAL INTEREST NEWS MAGAZINES; DOWNLOADABLE SOFTWARE FOR READING NEWS MAGAZINES THAT MAY BE DOWNLOADED FROM A GLOBAL COMPUTER NETWORK; DOWNLOADABLE SOFTWARE IN THE NATURE OF A MOBILE APPLICATION FOR OBTAINING, NEWS, INFORMATION AND COMMENTARY OF THE TYPE FOUND IN GENERAL INTEREST NEWS MAGAZINES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-0-2008; IN COMMERCE 12-0-2008.

FOR: MAGAZINES FEATURING NEWS, ENTERTAINMENT NEWS AND FEATURES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 11-0-2007; IN COMMERCE 11-0-2007.

FOR: INTERNET PROTOCOL TELEVISION (IPTV) TRANSMISSION SERVICES, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 11-0-2009; IN COMMERCE 11-0-2009.

FOR: PROVIDING NEWS IN THE NATURE OF CURRENT EVENT REPORTING VIA THE INTERNET; PRODUCTION AND DISTRIBUTION OF PROGRAMS IN THE NATURE OF RADIO, TELEVISION, AUDIO AND VIDEO PODCAST PROGRAMS, AND WEB SERIES FOR BROADCAST OVER THE INTERNET; NEWS AGENCIES, NAMELY, GATHERING AND DISSEMINATION OF NEWS; ENTERTAINMENT SERVICES, NAMELY, THE PROVISION OF CONTINUING PROGRAMS AND SEGMENTS, FEATURING NEWS AND COMMENTARY DELIVERED BY THE INTERNET; PROVIDING NEWS, INFORMATION, COMMENTARY AND MULTIMEDIA CONTENT, IN THE FIELD OF CURRENT EVENTS RELATING TO POLITICS, THE MEDIA, EDUCATION, FINANCE, BUSINESS, HEALTH, LIFESTYLE, RELIGION, SHOPPING, SPORTS, FITNESS, TECHNOLOGY, TRANSPORTATION, TRAVEL, ARTS, ENTERTAINMENT, BOOKS, HUMOR, GOSSIP, JOBS, AND AUTOMOTIVE TECHNOLOGY, DESIGN AND REPAIR; PROVIDING ONLINE NEWSLETTERS IN THE FIELD OF CURRENT EVENTS RELATING TO POLITICS, THE MEDIA, EDUCATION, FINANCE,



*Leisa Hatch Lee*

Acting Director of the United States Patent and Trademark Office

**Reg. No. 4,308,915** BUSINESS, HEALTH, LIFESTYLE, RELIGION, SHOPPING, SPORTS, FITNESS, TECHNOLOGY, TRANSPORTATION, TRAVEL, ARTS, ENTERTAINMENT, BOOKS, HUMOR, GOSSIP, JOBS, AND AUTOMOTIVE TECHNOLOGY, DESIGN AND REPAIR VIA E-MAIL, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 11-9-2009; IN COMMERCE 11-9-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,721,043, 4,084,161 AND OTHERS.

SER. NO. 85-692,100, FILED 8-1-2012.

DAVID ELTON, EXAMINING ATTORNEY

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See 15 U.S.C. §§1058, 1141k.* If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\* *See 15 U.S.C. §1059.*

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or  
reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See 15 U.S.C. §§1058, 1141k.* However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See 15 U.S.C. §1141j.* For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**Int. Cls.: 16 and 41**

**Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, 50, 100, 101 and  
107**

**United States Patent and Trademark Office**

**Reg. No. 2,721,043**  
**Registered June 3, 2003**

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

**NEWSMAX.COM**

NEWSMAX.COM (NEVADA CORPORATION)  
560 VILLAGE BLVD., SUITE 270  
WEST PALM BEACH, FL 33409

FOR: MAGAZINE OF GENERAL NEWS AND  
FEATURES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29,  
37, 38 AND 50).

FIRST USE 1-0-2001; IN COMMERCE 1-0-2001.

FOR: PROVIDING NEWS IN THE NATURE OF  
CURRENT EVENT REPORTING VIA THE INTERNET,  
IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 8-0-1998; IN COMMERCE 8-0-1998.  
SER. NO. 76-424,873, FILED 6-24-2002.

GWEN STOKOLS, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,659,417  
Registered July 21, 2009

SERVICE MARK  
PRINCIPAL REGISTER

NEWSMAX.COM

NEWSMAX.COM (NEVADA CORPORATION)  
560 VILLAGE BLVD, SUITE 270  
WEST PALM BEACH, FL 33409

FOR: ENTERTAINMENT SERVICES, NAMELY,  
PROVIDING ON-LINE REVIEWS OF MOVIES,  
BOOKS, AND MUSIC; ONLINE JOURNALS, NAME-  
LY, BLOGS FEATURING NEWS AND ENTERTAIN-  
MENT NEWS, IN CLASS 41 (U.S. CLS. 100, 101 AND  
107).

FIRST USE 5-0-2008; IN COMMERCE 11-6-2001.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,721,043.

SN 78-795,479, FILED 1-20-2006.

KAREN BRACEY, EXAMINING ATTORNEY

# **EXHIBIT B**

SATTERLEE STEPHENS BURKE & BURKE LLP

230 PARK AVENUE  
NEW YORK, NY 10169-0079  
(212) 818-9200  
FAX (212) 818-9606

www.ssbb.com

E-Mail: [mlerner@ssbb.com](mailto:mlerner@ssbb.com)  
Direct Dial: (212) 404 8714

51 JOHN F. KENNEDY PARKWAY  
FIRST FLOOR WEST  
SHORT HILLS, NJ 07078-2713  
(973) 218-2509  
FAX (973) 218-2401

October 14, 2013

By Express Mail and E-Mail ([mnejmeh@gmail.com](mailto:mnejmeh@gmail.com))

Mr. Mark Nejmeh  
414 Newark Avenue  
Bradley Beach, NJ 07720

Re: Infringement of Registered NEWSMAX Trademarks

Dear Mr. Nejmeh:

We are in receipt of your responses to our letter of October 11, 2013. We were certainly surprised to receive your response claiming that you are the rightful owner of the domain that infringes Newsmax Media Inc.'s ("Newsmax") registered mark and that you intend to launch an infringing newspaper under the mark NEWSMAX.US. While you may indeed have registered the domain, your having done so infringes Newsmax's intellectual property rights.

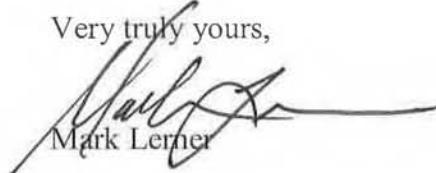
Please be advised that Newsmax vigorously enforces its registered marks. Should you not immediately renounce your plans to launch a newspaper, or any other related media product or service, Newsmax will seek immediate injunctive relief and attorneys' fees for the planned willful infringement, together with treble damages and profits, should it turn out you have actually commenced use.

Moreover, if you do not immediately transfer the domain name, Newsmax will seek statutory damages, which can be up to \$100,000, for violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. 1125(d), together with attorneys' fees and costs.

We look forward to receiving the domain name transfer authorization code by Wednesday, October 16, 2013.

This letter is not intended to be a complete statement of Newsmax's rights, and shall not be construed as a waiver of any legal or equitable rights or remedies, all of which are expressly reserved.

Very truly yours,



Mark Lerner

# EXHIBIT C

On Mon, Oct 14, 2013 at 9:44 PM, Mark Lerner <[mlearner@ssbb.com](mailto:mlearner@ssbb.com)> wrote:

Mr. Nejmeh:

Newsmax need not prove bad faith for an infringement claim. You are correct that Newsmax needs to prove bad faith (or reckless disregard) to obtain the domain via a UDRP proceeding or under the Anticybersquatting Consumer Protection Act, but we feel confident we will have little difficulty doing so should you persist with your planned launch, since you are clearly on notice of Newsmax's mark. The question is not whether you have actually planned legitimate "activity with news" that you can document, but rather that you are doing so using Newsmax's intellectual property. While the .us and .com domain extensions are distinct, this distinction is irrelevant as regards the NEWSMAX trademark. It is not enough for you to say you feel the business use is legitimate, when the name you selected is infringing.

You are free to come up with any other name that does not infringe NEWSMAX (or another trademark holder's rights). Indeed, "[i]n this circuit and others, numerous decisions have recognized that the second comer has a duty to so name and dress his product as to avoid all likelihood of consumers confusing it with the product of the first comer." *Harold F. Ritchie Inc. v. Chesebrough-Pond's, Inc.*, 281 F.2d 755, 758 (2d Cir. 1960).

This is not bullying. This is a trademark holder protecting its mark, which it is obligated to do, or risk losing that mark. Unfortunately, the only acceptable solution at this time is for you to change your name. We are hopeful that you will do so willingly, but if not, as previously noted, we will seek redress via the courts.

Mark Lerner

Satterlee Stephens Burke & Burke LLP

230 Park Avenue

New York, New York 10169

Direct Dial: [\(212\) 404-8714](tel:(212)404-8714)

General: [\(212\) 818-9200](tel:(212)818-9200)

Fax: [\(212\) 818-9606](tel:(212)818-9606)

Email: [mlearner@ssbb.com](mailto:mlearner@ssbb.com)

 Please Consider the Environment before printing this Email

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**From:** Mark Nejmeh [mailto:[mnejmeh@gmail.com](mailto:mnejmeh@gmail.com)]  
**Sent:** Monday, October 14, 2013 2:50 PM  
**To:** Lenore B. Randrup; Mark Lerner

**Subject:** Re: Infringement of Registered NEWSMAX Trademarks

Dear Mr Lemer,

I am consulting an attorney. At this point we are not abiding by your demands. I personally have researched this situation and find that you need to prove our bad faith. We have documentation of all our activity with news and can in fact show our good faith. I do own many domain names and all are related in some way. I look to find reasonable solutions to all issues. I like to make friends and not enemies. It is better to live life this way. What am I to do with the expense we have put forward for this launch. What other name should I use? I do not think your firm is being fair and I definitely see this as bullying. I now have to add an expense to this by hiring an attorney. You are correct that this upsets me. Upon my research I find that I am in the right providing I can prove my good faith, and I can easily.

I am here and looking for some solution if we are to alter our plans this will cost us a great deal.

Let's sit down face to face and discuss this, find a solution and move onward in life. Maybe you have a better name for us. We are pretty set on the name we own NewsMax.us and this is totally different than [newsmax.com](http://newsmax.com)

Mark Nejmeh

[732-995-3914](tel:732-995-3914)

---

**From:** Mark Nejmeh [mailto:[mnejmeh@gmail.com](mailto:mnejmeh@gmail.com)]  
**Sent:** Friday, October 11, 2013 2:46 PM  
**To:** Lenore B. Randrup  
**Subject:** Re: Infringement of Registered NEWSMAX Trademarks

Ms Randrup,

I believe your client tried buying this a few weeks ago through Godaddy and he offered \$200. I have no intention on selling the name of Newsmax.us . Since I am involved in Journalism with Nujobi.com a marketplace for journalism , this is the reason for holding onto this domain for our use. We are planning and have been planning publication of Newsmax.us in The NYC ? NJ Market. Newsmax.us has its own separate identity.

We have no intention of selling and are not infringing on a trademark that is applied for after we hold the name.

If anything this is bullying and reverse cyber squatting. I have been involved with News for quite a while.

I suggest you and your client contact me to work on a solution.

Thank you,

Mark Nejmeh  
[732-995-3914](tel:732-995-3914)

On Fri, Oct 11, 2013 at 9:29 AM, Lenore B. Randrup <[lrandrup@ssbb.com](mailto:lrandrup@ssbb.com)> wrote:

Pls. see attached.

Sincerely,

*Lenore Randrup*

*Assistant to Mark Lerner*

Satterlee Stephens Burke & Burke LLP

230 Park Avenue, Suite 1130

New York, NY 10169

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